

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY

JOAN E. KESLER,

Plaintiff,

v.

CIVIL ACTION NO. 5:04-0528

JO ANNE B. BARNHART,

Defendant.

MEMORANDUM OPINION AND ORDER

By Standing Order entered nunc pro tunc May 13, 2002, and filed in this case on May 28, 2004, this matter was referred to United States Magistrate Judge R. Clarke VanDervort. Pursuant to 28 U.S.C. § 636(b)(1)(B), the Standing Order directs Magistrate Judge VanDervort to submit proposed findings and recommendation concerning the disposition of this matter. Magistrate Judge VanDervort submitted his Proposed Findings and Recommendation on August 17, 2005, and proposed that this court (1) deny plaintiff's motion to remand, (2) grant defendant's motion for judgment on the pleadings, (3) affirm the decision of the Commissioner, and (4) direct the Clerk to remove this matter from the court's docket.

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted ten days, plus three mailing days, in which to file any objections to Magistrate Judge VanDervort's Proposed Findings and Recommendation. The failure of any party to file

objections within the appropriate time frame constitutes a waiver of such party's right to a de novo review by this court.

Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985). No objections have been filed by either party.

Having reviewed the Findings and Recommendation filed by Magistrate Judge VanDervort, the court hereby (1) **CONFIRMS** and **ACCEPTS** the factual and legal analysis within the magistrate judge's Proposed Findings and Recommendation, (2) **DENIES** plaintiff's motion to remand, and (3) **GRANTS** defendant's motion for judgment on the pleadings, (4) **AFFIRMS** the final decision of the Commissioner; and (5) **DIRECTS** the Clerk to remove this matter from the court's docket.

The Clerk is directed to forward a certified copy of this written opinion and order to all counsel of record and to any unrepresented party.

It is **SO ORDERED** this 8th day of September, 2005.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Chief Judge